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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 GERALD HEIDINGER, ) No. C 06-2832 MMC (PR)  
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16 )

Petitioner, )  
v. ) **ORDER OF DISMISSAL; GRANTING**  
JAMES A. YATES, ) **LEAVE TO PROCEED IN FORMA**  
Respondent. ) **PAUPERIS**  
(Docket No. 3)

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17 On April 26, 2006, petitioner, a California prisoner proceeding pro se, filed the above-  
18 titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has applied for  
19 leave to proceed in forma pauperis.

20 In his petition, petitioner states that in 2003, he was convicted in Monterey County  
21 Superior Court and was sentenced to a term of 25 years to life in state prison. He states that  
22 in 2004, he appealed the conviction and sentence to the California Court of Appeal, that the  
23 case was remanded for resentencing, and that later the same year he filed a petition for  
24 review in the California Supreme Court, which was denied.<sup>1</sup> Petitioner further states that at  
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26 <sup>1</sup>The petition indicates petitioner has filed the following additional matters in the state  
27 courts: an “appeal” to the California Court of Appeal in 2006, which was denied; a habeas  
28 petition in the Fresno County Superior Court, which was denied; and requests for transcripts  
and court files from the Monterey County Superior Court, which were denied. On May 15,  
2006, a habeas petition filed earlier in this district was dismissed without prejudice for failure

1 the time he filed the instant federal habeas petition, he had a petition, appeal or other post-  
 2 conviction proceeding pending in the California Supreme Court. See Form Petition at 5; see  
 3 also id. at 3.

4 The exhaustion requirement applicable to federal habeas petitions is not satisfied if  
 5 there is a pending post-conviction proceeding in state court. See 28 U.S.C. § 2254(b)-(c);  
 6 Sherwood v. Tomkins, 716 F.2d 632, 634 (9th Cir. 1983). If a post-conviction challenge to a  
 7 criminal conviction is pending in state court, a potential federal habeas petitioner must await  
 8 the outcome of that challenge before his state remedies are considered exhausted. See id.  
 9 This rule applies irrespective of whether the issue raised in the pending state petition is  
 10 included in the federal petition, for the reason that a pending state court challenge may result  
 11 in a reversal of the petitioner's conviction, thereby mooting the federal petition. See id.  
 12 (citations omitted).

13 As petitioner has a petition, appeal or other post-conviction proceeding pending in the  
 14 California Supreme Court, the instant petition for a writ of habeas corpus is hereby  
 15 DISMISSED, without prejudice to petitioner's refiling his claims after all state court post-  
 16 conviction challenges to petitioner's conviction have been completed and all claims  
 17 petitioner wishes to raise in federal court have been exhausted in accordance with  
 18 28 U.S.C. § 2254(b)-(c). See Rose v. Lundy, 455 U.S. 509, 522 (1982) (holding every claim  
 19 raised in federal habeas petition must be exhausted).


20 In light of petitioner's lack of funds, the application to proceed in forma pauperis is  
 21 GRANTED.

22 This order terminates Docket No. 3.

23 The Clerk shall close the file.

24 IT IS SO ORDERED.

25 DATED: June 19, 2006

26   
 27 MAKINE M. CHESNEY  
 28 United States District Judge

to present a case or controversy. See Heidinger v. Yates, No. 06-0506 MMC (PR).